



आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)83/Ahd-South/2019-20 / 13461 TO 13465
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-083-2019-20
दिनांक Date : 24-12-2019 जारी करने की तारीख Date of Issue 30/12/2019
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. AC/06/Div-II/2019-20 दिनांक: 30.05.2019 , issued by
Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
**Indian Institute of Management
Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s. Indian Institute of Management, Dr. Vikram Sarabhai Marg, Near Andhjan Mahamandal, Vastrapur, Ahmedabad-380015 (hereinafter referred to as “appellant”) has filed the present appeal against the Order-in-Original No.AC/06/Div-II/2019-20 dated 30.05.2019 (hereinafter referred to as “impugned order”) passed by the Assistant Commissioner of CGST, Division-II, Ahmedabad South Comm’rate Ahmedabad (hereinafter referred to as “adjudicating authority”).

2. The fact of the case, in brief, are that during the test check of audit of the records for the period 2009-10 to 2013-14 of the appellant by the officers of CERA Audit, Ahmedabad, it was noticed that in order to increase the connectivity between alumni of the IIMs, the appellant was having an Alumni Association in which the alumni were made members on payment of subscription fees. For this purpose, the appellant was having a website named www.iimalumni.org and the alumni so connected provide career support, facilitate alumni to network with peers and to create an infrastructure which would allow recruiters to interact with alumni who permit them to do so.

2.1. As the members were generally connected through website, the CERA Audit observed that it was exempted prior to 01.07.2012 by virtue of its exclusion from the definition of club or association. But with introduction of negative list w.e.f. 01.07.2012 it became taxable. Accordingly, a Show Cause Notice (hereinafter referred to as “SCN”) was issued to the appellant demanding service tax for the period 2012-13 to 2014-15. Thereafter, another SCN dated 16.04.2018 was issued for demand of service tax amounting to Rs.27,94,243/- under Section 73(1) alongwith recovery of interest under Section 75 of the Finance Act, 1994 on such amount of subscription fee received by the appellant pertaining to the period 01.04.2015 to 30.06.2017. Imposition of penalty under Section 76(1) and Section 78 of the Finance Act, 1994 was also proposed under the said SCN. The adjudicating authority vide the impugned order confirmed the demand of Service Tax under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 and also imposed penalty under Section 76 of the said Act *ibid*.

3. Being aggrieved with the impugned order, appellant preferred the present appeal on the following grounds :

- (i) that they are a society registered under the Societies Registration Act, 1860 and are engaged in providing various service and holding service tax registration for the said services;

that for the benefit and interaction of old student and new students to keep them updated in management field website has been maintained;



- (iii) that for the maintenance of the website, subscription is collected from the students;
- (iv) that for being charged under service tax there has to be a service provider and a service receiver whereas in the present case student association does not have any independent existence or identity of its own and there is no other party rendering any service to the students;
- (v) that as such there is a service to the self which would not attract service tax;
- (vi) that they relied upon the judgement in case of M/s. Sikkim Manipal University for the same.

4. Personal hearing in the case was held on 17.12.2019. Shri Vipul Khandhar, C.A. and Ms. Kalapi Shah, C.A. represented the appellant in the hearing. They reiterated the submissions made in Appeal Memorandum. They submitted that the issue has been settled in their favour by the Hon'ble Supreme Court in case of Calcutta Club Ltd. reported in [2019]110taxmann.com 47(SC). They also submitted a copy of Order-in-Appeal No.AHM-EXCUS-001-App-046-2018-19 dated 31.08.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad allowing appeal in their own case for earlier period.

5. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum as well as during personal hearing. The issue to be decided in the instant appeal is whether the service tax is payable on the subscription amount received from alumni of the appellant for maintaining a website used for interaction among them. The demand is for the period 2015-16 to 30.06.2017.

6. I find that the adjudicating authority has confirmed the demand mainly on the ground that according to Explanation 3(a) of Section 65B(44) (which defines service) of the Finance Act, 1994, an unincorporated association or a body of person and a member thereof shall be treated as distinct person. It has led to the adjudicating authority to arrive at a conclusion that the appellant and the alumni member are distinct person and thus are liable to service tax. It is also observed from Page-8 of the impugned order that the adjudicating authority has also observed that the judgement of Hon'ble Tribunal in Karnavati Club case and other cases have not attained finality as appeal was pending before the Hon'ble Supreme Court.

6.1. From the records, I find that the adjudicating authority in para-1 of the impugned order as well as the appellant in its Ground of Appeal under Para 3.1.1 at Page-14 have submitted that the appellant is a society registered under the Societies Registration Act, 1860. So it can be said that the appellant is an incorporated one and not an unincorporated one as defined under Explanation 3(a) of Section 65B(44) of the



Finance Act, 1994. When it is treated as incorporated one, the whole basis of the demand does not sustain. Moreover, the member of the website is none other than the individuals who are in any way associated with the appellant and a part or member of the appellant. So even if any service is considered to be provided, it can be considered to be provided to the members of the society. In other words it can be said that the service is provided to self and has not been provided to the others or a distinct person as alleged in the impugned order.

7. It is further observed that the demand of service tax for the earlier period i.e. from 2012-13 to 2014-15 was set aside by the Commissioner(Appeals) of Central Tax, Ahmedabad vide its Order-in-Appeal No.AHM-EXCUS-001-App-046-2018-19 dated 31.08.2018 wherein the Appellate Authority has held as under :

"I find that to be a taxable service, there has to be a service provider and a service recipient and that service should be provided for a consideration. In the instant case, there are alumni who have formed an association and they interact through a website and keep in contact with one another. There are certain results also of this interactions such as opportunity of jobs and guidance etc. It is also a fact that they pay a subscription fee and on this subscription, the demand of service tax has been confirmed. In such a scenario, the main condition of a service provider and a service recipient is not fulfilled as there is no service being provided here and it is just a medium of interaction between other people. Furthermore, there is no specific consideration for any particular service and therefore it is not right to hold that the liability of service tax payment arises".

7.1. As the impugned order is periodical in nature, the findings of Appellate Authority for dropping the original demand holds good for this case also being periodical in nature. As regards the other contention of the adjudicating authority in its impugned order at Page-8 regarding the pendency of the case law of M/s. Karnavati Club Ltd. at Hon'ble Supreme Court, I find that the issue has attained finality in favour of M/s. Karnavati Club Ltd. vide [2019]110 taxmann.com 47(SC) [Civil Appeal No.7773 of 2019] by the Hon'ble Supreme Court of India which the appellant has relied upon during personal hearing.

7.2. I also rely on the case law of Sikkim Manipal University v/s. Commissioner of Customs, C.Ex. & S.T., Siliguri [2017(3)G.S.T.L. 266(Tri.-Kolkata) relied upon by the appellant and by this authority in its earlier Order-in-Appeal No. Ahm-Excus-001-App-046-2018-19 dated 31.08.2018 in case of the present appellant itself. The relevant para of the case law is as under :

"4. After hearing both sides and perusal of record, it appears that the alumni association is a group of people who have graduated from the same institution. In future, they want to maintain emotional bonds among themselves and with the institution through this association. Hence, it is desired by every graduate to be associated with the past educational institution, who made a valuable contribution to their growth as well as academic achievement. No association can



survive without money. Hence, some money is required that can be expected in the form of fee/contribution taken from the students. In the instant case, the institution has collected some money in the name of alumni fee but without providing any service. When no Service is provided then applicability of the Service Tax is not in question. Needless to mention that Service Tax is applicable where any service is provided in lieu of consideration, but in the instant case no service is provided. When no service is provided then applicability of Service Tax is not in question."

8. In view of above discussion, I find no service has been provided by the appellant to the other person but the service is provided to its own members which is out of the purview of service tax. Thus, in absence of any service, the demand does not sustain, which has also been settled by the Hon'ble Supreme Court. In result, I set aside the demand of service tax. Since the demand is set aside, the question of charging any interest on such demand and imposition of any penalty upon the appellant does not arise.

9. The appeal filed by the appellant stands disposed of in above terms.

Akhilesh Kumar
 26th December, 2019.
 (Akhilesh Kumar)
 Commissioner (Appeals)

Date : 24.12.2019

Attested

Jitendra Dave
 30/12/19

(Jitendra Dave)
 Superintendent (Appeal)
 CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Indian Institute of Management,
 Dr. Vikram Sarabhai Marg, Near Andhjan Mahamandal,
 Vastrapur, Ahmedabad-380015

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2. The Principal Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Addl./Jt. Commissioner, (Systems), CGST & Cen. Excise, Ahmedabad South Comm'rate.
4. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-II, Ahmedabad South Comm'rate.
5. Guard File.
6. P.A. File.

